

SUPREME COURT OF ARIZONA

In the Matter of) Arizona Supreme Court
) No. R-12-0044
PETITION TO AMEND RULES 113, 115,)
119, 120, 126, 128, AND 134,) **O R D E R**
AND APPENDICES 3 AND 4, OF THE)
JUSTICE COURT RULES OF CIVIL)
PROCEDURE)
)
)
) **FILED 02/13/2013**

A petition having been filed proposing to adopt amendments to Rules 113, 115, 119, 120, 126, 128, and 134, and Appendices 3 and 4 of the Justice Court Rules of Civil Procedure and requesting expedited adoption of the amendments, upon consideration,

IT IS ORDERED granting the request for expedited adoption.

IT IS FURTHER ORDERED that Rules 113, 115, 119, 120, 126, 128, and 134, and Appendices 3 and 4 of the Justice Court Rules of Civil Procedure, be amended on an emergency basis in accordance with the attachment hereto, effective as of this date. Rule 28(G), Rules of the Supreme Court. A comment period on this petition is already in effect by previous order of this Court.

DATED this 13th day of February, 2013.

REBECCA WHITE BERCH
Chief Justice

TO:
Rule 28 Distribution
Paul Julien

ATTACHMENT*

(* additions shown by underscoring; deletions by ~~strikeouts~~)

JUSTICE COURT RULES OF CIVIL PROCEDURE

Rule 113. Serving a summons and complaint

a. – b. [No change]

c. Special situations for service of the summons and complaint on a defendant in the State of Arizona. Service of the summons and complaint within the State of Arizona on one of the following defendants, or using one of the following methods, must be made as provided in the following sections of Rule 4.1 of the Arizona Rules of Civil Procedure. The rules listed in sub-sections (1) through ~~(9)~~ (7) below are included in the appendix to these Justice Court Rules of Civil Procedure:

(1) – (3) No change

(4) upon the State of Arizona, a county, a municipal corporation, or any other governmental entity: see Rule 4.1(h);

~~(5) upon a county, municipal corporation, or other governmental subdivision: see Rule 4.1(i);~~

~~(6) upon other governmental entities: see Rule 4.1(j);~~

~~(7)~~ (5) upon a domestic corporation if an authorized officer or agent is not found within the State of Arizona: see Rule 4.1(l);

~~(8)~~ (6) by alternative or substituted service: see Rule 4.1(m);

~~(9)~~ (7) by service by publication: see Rule 4.1(n).

Proof of service upon any of the above defendants or using one of the above methods must be promptly prepared by the constable or certified private process server who completed service, and the proof of service must be filed with the court, except that proof of service by publication must be filed as provided by Rule 4.1(n). **[ARCP 4.1(e)–~~(j)~~(h), ~~(l)~~–~~(n)~~ (j) – (l), 4(d), (g)]**

d. – i. [No change]

Rule 114. [No change]

Rule 115. How to calculate time

a. – b. No change

c. Extension of time. When these rules or a court order require that a party do something by a specified time, including but not limited to filing a document, the court may extend that time period. The court may grant an extension on motion of a party or, if the extension is granted before expiration of the specified time period, on its own and without notice to the parties. After the expiration of the specified time period, the court may grant an extension only if a party files a motion showing that the party's failure to act before expiration of the time period resulted from the party's excusable neglect. However, the court may extend the time limits for a motion for judgment as a matter of law under Rule 134(b), a motion for new trial under Rule 138(b), or a motion requesting relief from a judgment or an order under Rule 141(c), only if the court finds that a party entitled to notice of the entry of a judgment or an order did not receive notice from the clerk or from another party within twenty-one (21) days of the date of entry, and that no party would be prejudiced if the court allowed an extension. **[ARCP 6(b)]**

Rules 116 – 118 [No change]

Rule 119. Amended and Supplemental Pleadings

a. Amendments to pleadings. A party may amend a pleading one time within twenty-one (21) days after service of a responsive pleading. If no response is required, a party may amend a pleading within twenty-one (21) days after the pleading was filed. If a motion is filed under Rule 116(a)(2)(iv), (a)(3) or (a)(4), a party may amend a pleading one time before the date on which a response to the motion is due. However, the filing of an amended pleading before the response to such a motion is due does not, by itself, relieve a party opposing the motion from filing a timely response to the motion. Thereafter, and upon a party's motion, the

court may permit the filing of an amended pleading at any stage of the proceeding and on terms that are just. Leave to amend must be freely given when justice requires. A party must file a response to an amended pleading within the time remaining for the party's response to the original pleading, or within twenty (20) days after service of the amended pleading, whichever is greater. [ARCP 15(a)]

b. – d. [No change]

Rule 120. Providing Documents to Other Parties ('Serving Documents') After the Summons and Complaint

a. – f. [No change]

g. Notices. Rules 123(c), 124(b), 125(b), 126(b), 126(c), 128(c), and 129(c), specify certain notices with mandatory language, including language that describes limits on the length of depositions, the number of discovery requests allowed, and other requirements. The limits and the other requirements contained in these notices are mandatory and binding absent a court order modifying them.

Rules 121 – 125 [No change]

Rule 126. Request for Admissions

a. – b. [No change]

c. Effect of admission; second notice. If a party has not responded to requests for admissions by the date specified in a notice under section (b) of this rule, then the party making the requests must serve a second notice on the party to whom the requests were made in substantially the following form:

"[Case Caption][Notice]

"To: _____:

"Do not ignore this notice.

“You were served with requests for admissions on _____ [insert date.] The rules of procedure required you to respond to these requests no later than _____ [insert date.] You have failed to respond to some or all of the requests.

“The rules will still allow you to respond to the requests for admissions by _____ [insert date that is fifteen (15) days after the date of this notice]. Each request that you do not respond to by that date will be admitted and taken as true in this lawsuit.

“Date and signature: _____

“[Notation of service under Rule ~~120(e)~~ 120(d)]”

Any matter admitted under this rule is conclusively established in the pending lawsuit unless the court permits an admission to be withdrawn or amended. The court may permit an admission to be withdrawn or amended only when it serves the interests of justice and when it furthers a decision of the lawsuit on its merits.

[ARCP 36(c)]

d. [No change]

Rule 127 [No change]

Rule 128. Motions

a. – d. [No change]

e. Proceedings on a motion. Any party opposing a motion has ten (10) days after the motion is served to file a response to the motion with the court. The time to respond to a motion remains in effect even if the court has set a pretrial conference. The court may treat a party’s failure to respond to a motion as the party’s consent that the motion be granted. Within five (5) days after a response is ~~filed~~ served, the moving party may file with the court a reply to the response, but a reply is not required. A response and a reply, if any, must be provided to (“served on”) the other parties as required by Rule 120. **[ARCP 7.1(a)]**

f. – g. [No change]

Rules 129 – 133 [No change]

Rule 134. Trials

a. Trial procedures. The court may impose reasonable time limits for a trial or for any portion of a trial. The order of proceedings in a trial by jury, so far as applicable, also governs a trial to a judge without a jury. A jury will be summoned, and a trial to a jury will proceed, as provided by Title 22, Chapter 2 of the Arizona Revised Statutes, and as provided by this rule. Unless the parties agree otherwise, the number of individuals selected as trial jurors, and the number of jurors needed to render a verdict, shall be as provided by Title 21, Chapter 1, of the Arizona Revised Statutes, or as otherwise provided by law. The order of trial is as follows:

(1) Potential jurors are summoned to the court and are given an oath to truthfully answer questions about their qualifications to serve as trial jurors. The judge, and the parties as the judge may allow, then ask questions to prospective jurors concerning their qualifications and fitness to serve as jurors. Potential jurors may be challenged for cause during the course of questioning. Upon request, the judge may allow the parties to make brief opening statements to the prospective jurors before the questioning process. After the questioning process, each side may exercise ~~four~~ three peremptory challenges, or some other reasonable number of peremptory challenges as the court directs, of potential jurors. The jurors then selected to hear the case are sworn, and the judge gives the jury preliminary instructions concerning the jury's duties, its conduct, the order of proceeding, and elementary legal principles that govern the trial. The judge will instruct the jurors that each of them may take handwritten notes during the trial, which the jurors can take to the jury room, and the court will provide jurors with note-taking materials.

(2) – (13) [No change]

b. [No change]

Rules 135 – 148 [No change]

Appendix 1 [No change]

Appendix 2 [No change]

Appendix 3. Arizona Rules Of Civil Procedure

Rule 4.1. Service of Process Within Arizona

~~**(d) Service of Summons upon Individuals.** Service upon an individual from whom a waiver has not been obtained and filed, other than those specified in paragraphs (e), (f) and (g) of this Rule 4.1, shall be effected by delivering a copy of the summons and of the pleading to that individual personally or by leaving copies thereof at that individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by delivering a copy of the summons and of the pleading to an agent authorized by appointment or by law to receive service of process.~~

(e) Service of Summons upon Minors. Service upon a minor under the age of sixteen years shall be effected by service in the manner set forth in paragraph (d) of this Rule 4.1 upon the minor and upon the minor's father, mother or guardian, within this state, or if none is found therein, then upon any person having the care and control of such minor, or with whom the minor resides.

(f) Service of Summons upon a Minor with Guardian or Conservator. Service upon a minor for whom a guardian or conservator has been appointed in this state shall be effected by service in the manner set forth in paragraph (d) of this Rule 4.1 upon such guardian or conservator and minor.

(g) Service of Summons upon Incompetent Persons. Service upon a person who has been judicially declared to be insane, gravely disabled, incapacitated or mentally incompetent to manage that person's property and for whom a guardian or conservator has been appointed in this state shall be effected by service in the manner set forth in paragraph (d) of this Rule 4.1 upon such person and also upon

that person's guardian or conservator, or if no guardian or conservator has been appointed, upon such person as the court designates.

(h) Service of Summons Upon ~~the State.~~ ~~If a waiver has not been obtained and filed, service upon the state shall be effected by delivering a copy of the summons and of the pleading to the attorney general.~~

~~(i) Service of Summons upon a County, Municipal Corporation or Other Governmental Subdivision.~~ **a Governmental Entity.** ~~Service upon a county or a municipal corporation or other governmental subdivision of the state~~ entity subject to suit, and from which a waiver has not been obtained and filed, shall be effected by delivering a copy of the summons and of the pleading to the ~~chief executive officer, the secretary, clerk, or recording officer thereof.~~ following individuals:

(1) For service upon the State, the Attorney General;

(2) For service upon a County, the Clerk of the Board of Supervisors thereof;

(3) For service upon a Municipal Corporation, the Clerk thereof; and

(4) For service upon any other governmental entity:

(A) The individual designated by the entity pursuant to statute to receive service of process; or

(B) If the entity has not pursuant to statute designated a person to receive service of process, then the chief executive officer(s), or alternatively, the official secretary, clerk, or recording officer of the entity as established by law.

~~(j) Service of Summons upon Other Governmental Entities.~~ ~~Service upon any governmental entity not listed above shall be effected by serving the person, officer, group or body responsible for the administration of that entity or by serving the appropriate legal officer, if any, representing the entity. Service upon any person who is a member of the "group" or "body" responsible for the administration of the entity shall be sufficient.~~

(~~k~~i) Service of Summons upon Corporations, Partnerships or Other Unincorporated Associations. Service upon a domestic or foreign corporation or upon a partnership or other unincorporated association which is subject to suit in a common name, and from which a waiver has not been obtained and filed, shall be effected by delivering a copy of the summons and of the pleading to a partner, an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the party on whose behalf the agent accepted or received service.

(~~l~~ j) Service of Summons upon a Domestic Corporation if Authorized Officer or Agent Not Found within the State. When a domestic corporation does not have an officer or agent in this state upon whom legal service of process can be made, service upon such domestic corporation shall be effected by depositing two copies of the summons and of the pleading being served in the office of the Corporation Commission, which shall be deemed personal service on such corporation. The return of the sheriff of the county in which the action or proceeding is brought that after diligent search or inquiry the sheriff has been unable to find any officer or agent of such corporation upon whom process may be served, shall be prima facie evidence that the corporation does not have such an officer or agent in this state. The Corporation Commission shall file one of the copies in its office and immediately mail the other copy, postage prepaid, to the office of the corporation, or to the president, secretary or any director or officer of such corporation as appears or is ascertained by the Corporation Commission from the articles of incorporation or other papers on file in its office, or otherwise.

(~~m~~ k) Alternative or Substituted Service. If service by one of the means set forth in the preceding paragraphs of this Rule 4.1 proves impracticable, then service may be accomplished in such manner, other than by publication, as the court, upon motion and without notice, may direct. Whenever the court allows an alternate or substitute form of service pursuant to this subpart, reasonable efforts

shall be undertaken by the party making service to assure that actual notice of the commencement of the action is provided to the person to be served and, in any event, the summons and the pleading to be served, as well as any order of the court authorizing an alternative method of service, shall be mailed to the last known business or residence address of the person to be served. Service by publication may be employed only under the circumstances, and in accordance with the procedures, specified in Rules 4.1(~~n~~ l), 4.1(~~e~~ m), 4.2(f) and 4.2(g) of these Rules.

(~~n~~ l) Service by Publication; Return. Where the person to be served is one whose residence is unknown to the party seeking service but whose last known residence address was within the state, or has avoided service of process, and service by publication is the best means practicable under the circumstances for providing notice of the institution of the action, then service may be made by publication in accordance with the requirements of this subpart. Such service shall be made by publication of the summons, and of a statement as to the manner in which a copy of the pleading being served may be obtained, at least once a week for four successive weeks (1) in a newspaper published in the county where the action is pending, and (2) in a newspaper published in the county of the last known residence of the person to be served if different from the county where the action is pending. If no newspaper is published in any such county, then the required publications shall be made in a newspaper published in an adjoining county. The service shall be complete thirty days after the first publication. When the residence of the person to be served is known, the party or officer making service shall also, on or before the date of the first publication, mail the summons and a copy of the pleading being served, postage prepaid, to that person at that person's place of residence. Service by publication and the return thereof may be made by the party procuring service or that party's attorney in the same manner as though made by an officer. The party or officer making service shall file an affidavit showing the manner and dates of the publication and mailing, and the circumstances warranting the utilization of the procedure authorized by this subpart, which shall be prima facie evidence of compliance herewith. A printed copy of the publication shall accompany the

affidavit. If the residence of the party being served is unknown, and for that reason no mailing was made, the affidavit shall so state.

Rule 4.2: **Service of Process Outside the State of Arizona** [No change]

Rule 22. Interpleader [No change]

Rule 24. Intervention [No change]

Rule 64.1. Civil Arrest Warrant [No change]

Appendix 4: Table of Cross-References (JCRC to ARCP)

[Note for the publisher: Make the following revisions in the sequence in which the specified JCRC rule number and lettered section appear in the table.]

JCRC Rule #	JCRC Rule title	X-ref. ARCP Rule #	ARCP Rule title
113(c)	<p>Special situations for service of the summons and complaint on a defendant in the State of Arizona:</p> <p>(1) – (3) [No change]</p> <p>(4) upon the State <u>of Arizona</u>,</p> <p>(5) upon a county, a municipal corporation, or other governmental subdivision <u>entity</u></p> <p>(6) upon other governmental entities</p> <p>(7)<u>(5)</u> upon a domestic corporation if an officer or agent is not found within Arizona</p> <p>(8)<u>(6)</u> alternative or substituted services</p>	<p>4(d)</p> <p>4(g)</p> <p>4.1(h)</p> <p>4.1(i)</p> <p>4.1(j)</p> <p>4.1(4)<u>(i)</u></p>	<p>Process: by whom served</p> <p>Return of service</p> <p>Service of summons upon the <u>State a governmental entity</u></p> <p>Service of summons upon a county, municipal corporation, or other governmental subdivision</p> <p>Service of summons upon other governmental entities</p> <p>Service of summons upon a <u>domestic</u> corporations, if <u>authorized officer or agent not found within the state</u> <u>partnerships, or other unincorporated associations</u></p> <p>Alternative or substituted service</p> <p>Service by publication; return</p>

	(9) (7) service by publication	4.1 (m) (k) 4.1 (n) (l)	
115(c)	<u>Extension of time</u>	<u>6(b)</u>	<u>Enlargement</u>
120(g)	<u>Notices</u>	--	--